IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 2ND FEBRUARY 2007 / 13TH MAGHA 1928

Crl.MC.No. 135 of 2007()

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CC.47/2004 of SPL.COURT SPE/CBI-II & IV ADDL.SESSIONS COURT, ERNAKULAM

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PETITIONER:

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ASOKAN, S/O. MUTHUSWAMI,
KATTUMANNAR KUDIKOVIL STREET,CHIDAMBARAM VILLAGE,
KOODALLUR DISTRICT, TAMILNADU.

BY ADV. SRI.T.RAVIKUMAR

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. THE SUPERINTENDENT OF POLICE,
CENTRAL INVESTIGATION BUREAU, KOCHI.
(CRIME NO.RC.3/S/2002/CBI/SCB/CHENNAI).

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR
BY ADV. SRI.S. SREEKUMAR (SC FOR CBI)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02/02/2007, ALONG WITH CRMC NO. 173 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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**CRL.M.C.NOs. 135 & 173 OF 2007**

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**Dated this the 2nd day of February, 2007**

**ORDER**

The petitioners are accused 3 and 7 in a prosecution under Secs.420, 170, 179 and 120B of the IPC. Cognizance has been taken on the basis of a complaint dated 7/9/01. Investigation was initially conducted by the local police. Long later, the investigation was entrusted with the C.B.I. After completing the investigation, the C.B.I. has filed the final report implicating the petitioners as also the other accused. Cognizance was taken by the learned Chief Judicial Magistrate. The learned Chief Judicial Magistrate was seized of the matter as C.C.No.47/04.

2. There is another case connected to the present case. The crux of the allegations in these cases is that some accused persons misrepresented to be the officials of the C.B.I. and fraudulently induced the victim to part with an amount of Rs.32.85 lakhs as consideration for the sale of gold biscuits. Subsequently, it is alleged that some of those miscreants were kidnapped illegally, detained, tortured and one of them done

to death by the victim in the present case. The case relating to the death of one of the kidnapped persons, kidnapping etc., was also investigated by the C.B.I. Final report has been filed in that case and the said case is now pending before the Special Court for CBI Cases as S.C.No.629/04.

3. On the eve of the day scheduled for commencement of the trial in S.C.No.629/04, one of the accused persons therein who is the victim in the present C.C.No.47/04 came before this Court and another Bench of this Court by order dated 8/8/06 in Crl.M.C. 2287/06 directed that C.C.No.47/04 be committed – obviously under Sec.323 of the IPC, to the Sessions Court (Special Judge for CBI Cases) before whom S.C.No.629/04 was pending. Accordingly, C.C.No.47/04 was committed to the Special Judge and the said case is now pending before the learned Sessions Court (Special Judge for C.B.I. Cases) as S.C.No.451/06.

4. The petitioners have now rushed to this Court with a prayer that the proceedings against them may be quashed invoking the powers under Sec.482 of the Cr.P.C. What is the reason? The short contention is that the allegations raised against them are false and not legally sustainable.

5. I shall scrupulously avoid any detailed discussion on the acceptability of the allegations raised against the petitioners in S.C.No.451/06 or the credibility of the data collected and relied on by the prosecution. Suffice it to say that exercising the powers under Sec.482 of the Cr.P.C. invoking the the extraordinary inherent jurisdiction available to this Court, I find absolutely no reason justifying the prayer for quashing the proceedings. The endeavour of resolving the disputed questions of fact cannot obviously be undertaken by this Court exercising jurisdiction under Sec.482 of the Cr.P.C. The prayer for prematurely terminating the proceedings against the petitioners by invoking the powers under Sec.482 of the Cr.P.C. must, in these circumstances, fail.

6. The learned counsel for the petitioners then submits that there may, at least, be a direction that their plea for discharge must be considered by the learned Sessions Judge under Sec.227 of the Cr.P.C. The committal is under Sec.323 of the Cr.P.C. Charges have not been framed. Obviously, when the offence is committed to a Court of Session whether under Sec.209 or under Sec.323 of the Cr.P.C. the Sessions Judge has to follow the procedure under Chapter XVIII of the Cr.P.C.

prescribed for trial before a Court of Session. If there be any doubt on this aspect, the decision in **Sudhir and Others v. State of M.P.** ((2001) 2 SCC 688) removes the last trace of such doubt.

7. No special or specific directions appear to be necessary to the learned Special Judge/Sessions Court to consider the plea of discharge under Sec.227 of the Cr.P.C. Any court following the procedure under Chapter XVIII must certainly take appropriate decisions under Secs.227 and 228(1)(b) of the Cr.P.C. Of course, in a case committed under Sec.323, Sec.228 (1)(a) of the Cr.P.C. can have no application at all. I am, in these circumstances, satisfied that no further directions are necessary in this regard.

8. These Crl.M.Cs. are, in these circumstances, dismissed with the above observations.

Sd/-

**(R. BASANT, JUDGE)**

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P.S. to Judge